



FW: state certification
Powell, Richard, NMENV to: Isaac Chen

10/11/2012 11:11 AM

From: "Powell, Richard, NMENV" <richard.powell@state.nm.us>
To: Isaac Chen/R6/USEPA/US@EPA

Here you go.

~ Rich

From: Powell, Richard, NMENV
Sent: Friday, September 14, 2012 8:22 AM
To: 'Brent Larsen'
Cc: Renea Ryland; Larry Giglio
Subject: RE: state certification

Thanks Brent –

As I suspected, we'll need to think this through very carefully.

When it comes up (it will), perhaps we should discuss specifics prior to issuance of a draft permit – for instance during the two week peer review at the latest (sooner would be better). In addition to Chevron/Questa and groundwater concerns, this will likely come up regarding an activity at LANL related to a facility that is currently covered under their NPDES permit and therefore possibly exempt from RCRA. Apparently this activity is in blatant violation of RCRA regulations but since discharges from the facility at LANL conducting this activity are included in their current NPDES permit, LANL claims a RCRA exemption for the activity. So, once again, the lack of clarification regarding the applicability of RCRA regulations to processes typically regulated under RCRA when surface water discharges generated by these processes/activities are regulated under NPDES is causing all sorts of problems.

At any rate, after I posed this question to you, our Division Director apparently had a brief discussion with Bill Honker when he was here earlier this week about addressing the LANL situation in our 401 certification. So I guess we will have to figure it out at some point.

~ Rich

From: Brent Larsen [mailto:Larsen.Brent@epamail.epa.gov]
Sent: Thursday, September 13, 2012 5:12 PM
To: Powell, Richard, NMENV
Cc: Renea Ryland; Larry Giglio
Subject: Re: state certification

Rich:

We will want to really think about this one, especially on unintended consequences. For example, if we were to put something in an NPDES permit (assuming we even could if not related somehow to the discharge to a water of the US), would that make them exempt from RCRA for all media for the area covered by that permit condition? Remember the Western Refining permit that is still hung up on RCRA

exemption issues?

Also much cleaner if the condition was somehow tied to discharge quality (or possibly even quantity), e.g., need if cleaner to protect groundwater under the losing stream.

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From: "Powell, Richard, NMENV" <richard.powell@state.nm.us>
To: Brent Larsen/R6/USEPA/US@EPA
Date: 09/04/2012 12:56 PM
Subject: state certification

Brent – This question may require input from your legal folks. 33 USC § 1341 – Certification (d) states:

(d) Limitations and monitoring requirements of certification

Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 1311 or 1312 of this title, standard of performance under section 1316 of this title, or prohibition, effluent standard, or pretreatment standard under section 1317 of this title, and with any other appropriate requirement of State law set forth in such certification, and shall become a condition on any Federal license or permit subject to the provisions of this section.

We believe the phrase "and with any other appropriate requirement of State law" probably includes State law not necessarily related to protection of surface water quality. For instance (and this is why I ask RE: Chevron Mining/Questa Mine), we might require as a condition of state certification that a permit include a provision(s) to ensure protection of ground water quality (no known or suspected hydrologic connection to surface water). I believe we have (rarely) used this provision in the past to ensure protection of ground water and possibly other media related to disposal of hazardous waste (i.e., state RCRA).

Although we have probably done this in the past, to avoid a potential conflict between what we believe the State's certification authority allows, and EPA Permits Branch, I would appreciate your thoughts. Since this may come up in the near future, sooner is probably better than later.